

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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GARTH DRABINSKY,

Plaintiff,

vs.

ACTORS' EQUITY ASSOCIATION,

Defendant.
-----X

____ Civ. No. 2022

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff, Garth Drabinsky ("Drabinsky"), by his attorneys, The Roth Law Firm, PLLC, as and for his Complaint against Defendant, Actors' Equity Association ("Actors Equity" or "Defendant"), alleges as follows:

PRELIMINARY STATEMENT

This is an action by Drabinsky for defamation, intentional tort and/or negligence against Actors Equity.

Drabinsky, more than any other producer in recent musical theatre history, has tackled the insidious issues of racism, prejudice and bigotry in America through the musicals he has produced for Broadway. Throughout, Drabinsky has been supported with, and encouraged by, a vast array of prominent writers, composers, directors and other theatrical talents. Drabinsky, as much as any other producer, has always produced with transparency and respect for all artists and those associated with his productions and his audiences. In so doing, he has consistently stood in solidarity with those who march against the evil of racial injustice. Indeed, as set forth below, since 1992, many of the theatrical productions for which he has been the lead creative producer, including the landmark shows *Kiss of the Spider Woman*, *ShowBoat*, *Ragtime*,

*Parade*¹ and most recently *Paradise Square* (the “Musical” or “*Paradise Square*” which deals with issues of race, immigration, nationalism, and diversity), involved prioritizing and giving voice to disenfranchised groups and confronting the history of systemic oppression, injustice, and racism in America.

Actors Equity, however, has turned Drabinsky’s remarkable record of achievements on its head by accusing Drabinsky of being a racist and creating a hostile and unsafe work environment stemming from the production of *Paradise Square*. Without any evidentiary hearing or his ability to disprove the malicious and false accusations against him, Actors Equity went one step further by publicly branding Drabinsky with its Scarlet Letter and placing Drabinsky on its self-proclaimed “blacklist.” Actors Equity’s conduct as particularized below has been reckless, callous, outrageous and deplorable.

In acting as it did, Actors Equity consciously ignored the extensive measures which Drabinsky took to improve the financial and working conditions of members of the cast and stage management of *Paradise Square* (the “Cast”) who, between March 12, 2020 and August 22, 2021, had been unemployed for prolonged periods as a result of the COVID-19 pandemic (“COVID”). Indeed, for the benefit of the Cast, Drabinsky caused Paradise Square Broadway Limited Partnership (the “Broadway Partnership”) to vary the minimum terms of the Actors Equity Collective Bargaining Agreement with the Broadway League (the “CBA”), including but not limited to the following:

- i. Despite the fact that the Musical was designated a Chicago point of origin production, Drabinsky strongly implored the Broadway Partnership to offer members of the Cast who needed financial support with respect to housing in Chicago, interest-free loans against their first month’s rent and/or security deposits. Many members of the Cast took advantage of the resulting generosity of the Broadway Partnership;

¹ Drabinsky was lead creative producer until his departure from Livent Inc. in August, 1998.

- ii. Contrary to the common practice of paying in arrears, Drabinsky encouraged the Broadway Partnership to pay the Cast weekly in advance, instead of paying a week in arrears, which was permitted by the CBA. The Cast was, thus, paid weekly on the Thursday of the current week of work during the entire run of the Musical in both Chicago and on Broadway. As a result, the Broadway Partnership advanced salaries to the Cast before they were fully earned;
- iii. At least three times over the production history of the Musical, between the March 12, 2020 COVID shutdown of Broadway theatres and the closing of the Musical on July 17, 2022, Drabinsky provided the Cast with opportunities to earn incremental fees for their services, including: a) the audio/video recording of musical selections from Paradise Square in August 2021; b) the five camera filming of the Chicago production of the Musical for promotional purposes, in October 2021; and c) the original Broadway Cast Recording of Paradise Square in April 2022;
- iv. Drabinsky spent significant time intervening in issues and conflicts that affected the Cast, including dealing with harassment and sexual harassment allegations by four members of the Cast and one member of the creative team against an Actors Equity member of the Cast, J. H., which Actors Equity refused to address. These serious allegations arose in part in Berkeley, California, subsequent to Berkeley and before the Cast began rehearsals in Chicago. Drabinsky acted to protect the health, safety, and well-being of the Cast and caused the Broadway Partnership to terminate the contract of J.H. before the Broadway engagement, even though this decision caused the Broadway Partnership to incur additional casting, rehearsal, and costume costs;
- v. Despite members of the Cast signing binding contracts during the months of April and May of 2021 for both the Chicago and Broadway engagements of the Musical, Drabinsky, without having any obligation to do so, successfully urged the Broadway Partnership to accommodate most of the material amendments initiated by members of the Cast during the hiatus between Chicago and Broadway, with respect to the financial terms of their Broadway engagement;
- vi. In spite of the enormous losses incurred by the Musical because of two extended COVID shutdowns, Drabinsky graciously acquiesced to the Cast's request to have more than half of the Cast perform at the June 12th, 2022 Tony Awards telecast, costing the Broadway Partnership nearly \$200,000, a substantial portion of which was incurred for the benefit of the Cast. Originally, Drabinsky was prepared to only consent to a solo performance by Joaquina Kalukango, the Tony Award winner for Best Actress in a Leading Role in a Musical, at a cost to the Broadway Partnership of \$30,000; and

- vii. The Irish Step Dance specialty choreographers and members of the Cast, J.O. and G.C., as was the case with the Cast, had signed binding contracts in May 2021 for both the Chicago and Broadway engagements of the Musical that contained the terms for their services as both actors and as choreographers. Despite this, during the first two weeks of rehearsals in Chicago, with the knowledge of Actors Equity, they demanded revisions to the existing financial terms of their contracts governing their choreographic services. Furthermore, in breach of their existing contracts and with the knowledge of Actors Equity, J.O. and G.C. refused to provide their choreographic services until these financial demands were agreed to by the Broadway Partnership. Without the obligation to do so, and in the face of continuing rehearsal work stoppages caused by J.O. and G.C., Drabinsky was compelled to recommend that the Broadway Partnership accede to their demands to minimize further disruptions and alleviate disharmony amongst the Cast.

Actors Equity acted in apparent ignorance of the fact that the Musical was being produced in the wake of a national cultural reckoning with racial inequality and racial injustice following the widely publicized murder of George Floyd in May 2021, the myriad other wrongful murders of innocent Black Americans, also in 2021, and other racially charged events affecting Black Americans, resulting in nationwide protests in many forms in support of the Black Lives Matter movement. The heavy weight of racism, prejudice, and “white privilege” heightened the emotional challenges and tensions amongst the diverse members of the Cast during the initial weeks of rehearsal in Chicago in September 2021 (and later in New York City in February and March 2022).

As a result of both the aforementioned conduct of J.O. and G.C. and the impact on the Cast of the George Floyd murder, and other racially charged events, Drabinsky, as the Lead Creative Producer for the Musical, realized it was incumbent on him during the initial weeks of rehearsal in Chicago, to call a meeting with the Cast and creative team. Drabinsky had an overriding concern that the Cast had become burdened by, and mired in, the complex issues addressed in the Musical. Drabinsky witnessed daily that the rehearsal process was stymied and

rapidly falling into disarray as a result of these issues. Drabinsky also appreciated that one-half of the Cast was new. They had not been through the early reading, workshop, and rehearsal development of the Musical and therefore only recently were coming to fully grasp the social issues raised in the Musical.

At the Chicago meeting held on October 2, 2021, which was attended by Actors Equity, Drabinsky explained to the Cast that he was extremely sensitive to the issues raised in the Musical because he had confronted similar issues in his prior productions including the 1993 restoration by legendary director Hal Prince (“Prince”) of the Kern and Hammerstein II watershed musical, *ShowBoat*, a work that sharply denounced racism more strongly than any other American musical in the early history of American theatre. *ShowBoat* was in fact conceived by Kern and Hammerstein II as a discourse on the American musical and social history.

Drabinsky explained to the meeting attendees that during pre-production of *ShowBoat*, he, in collaboration with Prince, decided to keep the following original opening bitter refrain of Ol’ Man River in order to protect the integrity of Hammerstein II’s intention to shock audiences to fully understand the harsh reality of the Black experience in America and in connection therewith, the sins of American society:

"Show Boat"

The right to make arrangements of or otherwise reproduce this composition is expressly reserved

Ol' Man River

(Joe and Male Chorus)

Words by
OSCAR HAMMERSTEIN IInd

Music by
JEROME KERN

Moderato

Piano

ff *deliberato* *ff*

poco rall. e dim. *p* *mf* *rit.*

Ukulele
Bb E1 G C

p JOE (SOLO)

Nig-gers all work on de Mis-sis-sip-pi, Nig-gers all work while de whitefolks play,

p *a tempo*

3

Drabinsky further explained in the presence of Actors Equity how conflicted he was on whether to retain those harsh lyrics, and that his decision to produce *Show Boat* had also led Drabinsky to become the subject of anti-Semitic catcalling from the Black Caribbean community in Toronto for almost nine months prior to the press opening in Toronto. He went on to explain how he and Prince engaged in an ongoing, strenuous debate of deciding whether such horrific words should be retained in the restored musical as they were in the original 1927 production. Drabinsky related this difficult experience so that everyone present would understand that the racial issues of *Paradise Square*, while challenging and sometimes overwhelming, had to be emphatically confronted. Drabinsky believed that the story of his history with *Show Boat* would help reinforce the spirit within the Cast and strengthen their

resolve to collectively and powerfully convey the Musical's messages to audiences and in so doing, further honor the influence of Black American culture through music and dance.

Rather than receiving praise from Actors Equity for his sensitivities and his intentions to bring harmony and resolve tensions amongst the Cast (which in fact was followed by three weeks of productive rehearsals), Actors Equity maliciously issued a false and defamatory letter to the Musical's general manager, Jeffrey Chrzczon (the "GM"), 23 days following the meeting, identifying Drabinsky as a racist and calling for "the immediate removal of Garth Drabinsky from the workplace for the safety of our members." Actors Equity's letter which was copied to Mary McColl, Executive Director, AEA; Calandra Hackney, Assistant Executive Director, AEA; Terry Schnuck, Producer; Alison Corinotis, Broadway League, is reprinted in its entirety here:

October 25, 2021

Jeff Chrzczon
General Manager
Theatrics Park LLC

via e-mail

re: PARADISE SQUARE/Production Contract (Chicago)

Dear Jeff:

We have been made aware that Garth Drabinsky used inappropriate and unwanted racial slurs during rehearsals for PARADISE SQUARE, creating a hostile work environment and violating the "Broadway League-Actors' Equity Return to Work Memorandum of Agreement – Broadway and Sit-Downs" provisions regarding "Returning to a Workplace Free of Discrimination, Harassment and Bullying" in reference to Production Contract Rule 43.

Equity's position for appropriate remedy is the immediate removal of Garth Drabinsky from the workplace for the safety of our members.

Sincerely,
ACTORS' EQUITY ASSOCIATION



Dana Gal
Senior Business Representative

Other than in the meeting, and only in the context of quoting Hammerstein II's lyrics, for the reasons stated, at no time did Drabinsky utter any racial slurs during rehearsals that followed the meeting. Actors Equity acted wrongfully in condemning Drabinsky - a producer who throughout the previous three decades had boldly championed the cause of confronting America's racist history through the art form of musical theatre, which was also his purpose in producing *Paradise Square*.

This letter was the first step in Actors Equity's engagement in an egregious pattern of conduct to maliciously defame and harm Drabinsky, which ultimately included placing him on its "blacklist."

Drabinsky particularizes herein the numerous actions and decisions by Actors Equity, including the actions by members of the Cast that were carried out with the knowledge and consent of Actors Equity. These actions, including the false statements particularized by Actors Equity above and below, constitute defamation *per se* under the laws of the State of New York.

As a consequence of Actors Equity's actions, Drabinsky has sustained and continues to sustain serious damages. His reputation and his professional character have been decimated as he has been effectively blacklisted from working in theatre, television, and film. Therefore, Drabinsky has initiated these proceedings seeking damages for Actors Equity's wrongful conduct.

THE PARTIES

1. Drabinsky is a natural person who resides in Toronto Ontario, Canada, and is a citizen of Canada.

2. Actors Equity is a U.S. labor union which, upon information and belief, is headquartered at 165 West 46th Street New York, NY 10036. Actors Equity was founded in

1913 and represents over 50,000 professional theater actors and stage managers nationwide.

Actors Equity maintains its principal place of business in New York and, upon information and belief, is a voluntary association incorporated under the laws of the State of New York.

3. Actors Equity maintains and publishes a “Do Not Work List” list which is available to its members and the public. It utilizes this powerful list as a “blacklist” to successfully alert and dissuade its members and sister unions and members of the public from working or engaging professionally with a person or entity on the list.

4. In spite of Drabinsky’s illustrious career, Actors Equity placed Drabinsky on this list and published to the world that “Garth Drabinsky – including any production where he is acting in *any* producing capacity,” has been placed on its “Do Not Work List.”²

JURISDICTION AND VENUE

5. The court has subject matter jurisdiction pursuant to 28 U.S.C. 1332 because the parties to this action are completely diverse and the amount in controversy exceeds \$75,000.

6. The Venue is proper in this judicial district because Actors Equity maintains its headquarters in New York, New York. In addition, many of the facts underlying this claim for defamation occurred in this judicial district.

FACTUAL BACKGROUND

Drabinsky Has Devoted His Entire Career to the Entertainment Industry

7. Drabinsky began his career as an entertainment lawyer in 1975 at the age of 25.

8. Drabinsky is the only Canadian to have achieved international success in each of motion picture production, distribution and exhibition, live theatre, television, music recordings, and the presentation of both classical and popular music.

² <https://www.actorsequity.org/resources/DoNotWork/>

9. Over the span of approximately 50 years, Drabinsky established long and enduring relationships with some of the most prominent names in entertainment (some of whom are now deceased). Each of those individuals, who are or were at the pinnacle of their craft, are or were inordinately demanding, expecting the individuals with whom they work to be diligent, professional and maintain the level of work ethic and integrity required to create and produce first-class and socially responsible artistic work. Those luminaries include, Donald Sutherland, Elliott Gould, Christopher Plummer, George C. Scott, Melvin Douglas, Jack Lemmon, Lee Remick, Tom Cruise, Shelley Long, Shirley MacLaine, Paul Newman, Joanne Woodward, John Malkovich, Robert Redford, Martin Scorsese, Glenda Jackson, Andrew Lloyd Webber, Kathleen Marshall, Robin Philips, Donny Osmond, Diahann Carroll, Colm Wilkinson, Harold Prince, Gillian Lynne, Trevor Nunn, John Kani, Susan Stroman, Terrence McNally, Ted Chapin, John Kander, Fred Ebb, Joel Grey, E.L. Doctorow, Frank Galati, Lynn Ahrens, Stephen Flaherty, Marvin Hamlisch, Craig Carnelia, John Guare, Alfred Uhry, Jason Robert Brown, Richard Maltby, David Shire, Ann Reinking, Ben Heppner, Karen Kain, James Taylor, Placido Domingo, Diana Krall, Tony Bennett, Helen Mirren, Jeremy Irons, Adrian Noble, Lebo M., Lorin Maazel, Barry Manilow, The London Symphony Orchestra, Chita Rivera, Rob Marshall, Yo Yo Ma, Valarie Pettiford, LaChanze, Robert Morse, Elaine Stritch, Graciela Daniele, Taylor Hackford, Santo Loquasto, John Patrick Shanley, Francis Ford Coppola, Carmine Coppola, Brent Carver, John McMartin, Rebecca Luker, Sergio Trujilo, Adrian Noble, Wynton Marsalis, Daniel Barenboim, Andy Blankenbuehler, Desmond Richardson, Alex Sanchez, Victoria Clark, Montego Glover, Merle Dandridge, Heather Headley, Lonette McKee, Marilyn McCoo, Brian Stokes Mitchell, Audra McDonald, Mark Jacoby, Judy Kaye, Marin Mazzie, Peter Friedman, Jules Fisher, Thulani Davis, Bill T. Jones, and Moises Kaufman. Not only has Drabinsky

worked arduously for these individuals, but, as is true with the production of every one of his films, television shows, theatrical presentations and concerts, he has worked side-by-side with each of them. During the years, Drabinsky has received hundreds of written expressions of heartfelt love and gratitude for his collaborative efforts.

10. Throughout the course of his career, Drabinsky has provided actors and creators the environment to bring their artistry and passion to their work. He has allowed actors and creators to express their individuality. He has always been receptive to their opinions and artistic contributions. Drabinsky has allowed all voices to be heard in an open and honest exchange of ideas and has always deferred to the best expression of an idea. Drabinsky has never engaged in any acts of physical intimidation or physical abuse against anyone.

11. In 1978, Drabinsky co-founded Cineplex Odeon Corporation, a chain of cinemas which ultimately grew to 1,800 screens across North America.

12. From 1993 to 1998, Drabinsky was Chairman and Chief Executive Officer of Livent, Inc. (“Livent”). Under Drabinsky’s leadership, Livent’s Broadway productions were nominated for 61 Tony Awards and collectively won 19 Tony Awards, including Best Musical for *Kiss of the Spider Woman* (1993) and *Fosse* (1999), as well as Best Musical Revival for *ShowBoat* (1995).

13. Drabinsky’s work as a creative producer has been honored with numerous Outer Critics’ Circle Awards, New York Drama Critics Circle Awards, New York Drama Desk Awards, and the London Evening Standard Award.

14. Drabinsky’s other award-winning productions include *Candide*, *Barrymore*, and the internationally acclaimed *Ragtime*, a production that was nominated for 13 Tony Awards including Best Musical, Best Performance by a Leading Actor in a Musical (Brian Stokes

Mitchell and Peter Friedman) and Best Performance by a Leading Actress in a Musical (Marin Mazzie). It won Tony Awards for Best Book of a Musical, Best Original Score, Best Orchestrations and Best Performance by a Featured Actress in a Musical (Audra McDonald).

15. Drabinsky was also responsible for the Toronto production of Andrew Lloyd Weber's *Phantom of the Opera*, which remains the longest running musical in Canadian history (ten consecutive years beginning in October 1989), as well as the North American production of *Joseph and the Amazing Technicolor Dreamcoat*, starring Donny Osmond.

16. Other musical works initially developed by Drabinsky and staged on Broadway subsequent to his departure from Livent include: *Parade*, which opened at Lincoln Center in December 1998, directed by Harold Prince with a score by composer Jason Robert Brown and book by Alfred Uhry;³ *Seussical*, a musical inspired by the works of Theodor Geisel, with music by Stephen Flaherty, lyrics by Lynn Ahrens, and book by Lynn Ahrens and Stephen Flaherty, which opened on Broadway in November, 2000; and the adaptation of the breakthrough film noir drama, *The Sweet Smell of Success* directed by Nicholas Hytner, with a book by John Guare, music composed by Marvin Hamlisch, lyrics by Craig Carnelia and starring John Lithgow, Brian d'Arcy James and Kelli O'Hara, which opened on Broadway in March 2002.

17. Throughout his career, Drabinsky has made it his priority to engage Black American artists in principal roles and major creative positions in his productions. Many of these artists had not yet received widespread public recognition. Nevertheless Drabinsky, in connection with their engagement with him, vigorously promoted their achievements. Many have gone on to receive critical acclaim and prestigious awards for their work. They include:

³ *Parade* received nine Tony Award nominations and won two Tony Awards as well as the 1998 Drama Desk Award for Best Musical, and the New York Drama Critics Circle Award for Best Musical

a.) Vanessa Williams in her Broadway debut in *Kiss of the Spider Woman*; b.) Diahann Carroll in the lead role of “Norma Desmond” in the Canadian production of *Sunset Boulevard*; c.) Gretha Boston in the role of “Queenie” in the Broadway production of *ShowBoat*, for which she won a Tony Award for Best Performance by an Actress in a Featured Role in a Musical; d.) Michel Bell as “Joe” in the Broadway production of *ShowBoat*, Tony Award nominee for Best Performance by an Actor in a Featured Role in a Musical; e.) Brian Stokes Mitchell as “Coalhouse Walker, Jr.” in the Broadway production of *Ragtime*, Tony Award nominee for Best Performance by an Actor in a Leading Role of a Musical; f.) Audra McDonald as “Sarah” in the Broadway production of *Ragtime*, winner of the Tony Award for Best Performance by an Actress in a Featured Role in a Musical; g.) Desmond Richardson in *Fosse*, Tony Award nominee for Best Performance by an Actor in a Featured Role in a Musical; h.) Valarie Pettiford in *Fosse*, Tony Award nominee for Best Performance by an Actress in a Featured Role in a Musical; i.) Joaquina Kalukango in the role of “Nelly” in the Broadway production of *Paradise Square*, winner of the Tony Award for Best Performance by an Actress in a Leading Role in a Musical; j.) Sidney DuPont in the role of “Washington Henry” in the Broadway production of *Paradise Square*, Tony Award nominee for Best Performance by an Actor in a Featured Role in a Musical; k.) Bill T. Jones as Choreographer for the musical *Paradise Square*, Tony Award nominee for Best Choreography; l.) Toni-Leslie James as Costume Designer of the musical *Paradise Square*, Tony Award nominee for Best Costume Design of a Musical; m.) Masi Asare as Lyricist for the musical *Paradise Square*, Tony Award nominee for Best Original Score Written for the Theatre; and n.) countless other less prominent Black Americans who were vital contributors to the artistic and commercial success of his productions.

18. At one point in 1997, Drabinsky employed in his various musicals more than 250 Black American members of Actors Equity, a milestone not shared with any other of his contemporary Broadway producers.

19. In addition to developing and constructing new state of the art legitimate theatres in Toronto and Vancouver, Drabinsky was responsible for and has been devoted to the restoration and preservation of several of North America's most acclaimed theaters, including the Pantages in Toronto, the Lyric and Apollo Theaters in New York, and the Oriental Theater in Chicago. His theaters have received many restoration and/or architectural conservancy awards.

20. Drabinsky is the recipient of two honorary Doctorate Degrees, is an ardent spokesman regarding individual liberty and, throughout his career, has confronted and continues to confront the highly charged issues of race, prejudice and hostility. **Exhibit 1.**

21. On May 7, 1989, Drabinsky became the first Canadian to be awarded the B'nai B'rith International Distinguished Achievement Award. The award has also been presented to President Dwight D. Eisenhower, among many others. Upon accepting the award, Drabinsky announced his plan to establish and fund (with the over \$1,000,000 US raised at a dinner in New York City in his honor) a lecture series and bureau to combat the universal human afflictions of prejudice and racism, and help to develop a greater mutual understanding and cooperation amongst people. The first speakers in the series were Nobel Laureate Elie Wiesel, Harvard Professor of African American Studies and Research, Henry Louis (Skip) Gates, Jr., President of West Germany Richard von Weizsacker, and William F. Buckley Jr.

22. Drabinsky's autobiography, *Closer to the Sun*, which he co-authored with Governor General's Award finalist, Marq de Villiers, with an introduction by Christopher

Plummer, was published by McClelland & Stewart in 1995. It became an immediate best seller, appearing on the Hardcover Non-Fiction lists of prominent national newspapers, including, *The Toronto Star*, *The Montreal Gazette*, *The Ottawa Citizen*, *The Vancouver Sun*, *The Winnipeg Free Press*, *The Calgary Herald*, *The Edmonton Journal*, and *Maclean's* magazine.

Drabinsky Pioneered Educational Programs for Students

23. Commencing in 1989, when *Phantom of the Opera* opened in Toronto, Drabinsky launched a pioneer program titled The Phantom Educational Program (the “Program”) for teachers and students ages 12 through 18 living within a 250-mile radius of the City of Toronto. The Program was designed as a centerpiece for an outreach campaign to those individuals who were rarely targeted and usually underserved by the Toronto live theater industry.

24. The Program leveraged production-inspired lesson plans and engaged students through enriched interaction with artists and experts in the live theater industry. It also prioritized the arts as a cornerstone for social emotional learning. The Program included field trips to performances of *Phantom of the Opera*.

25. From 1989 forward, Drabinsky has been a strong proponent of live theater educational programs for many of his productions. As such, he has been a catalyst for hundreds of thousands of students being introduced to the innerworkings of musical theater.

26. In connection with the Musical, Drabinsky, with others, prepared an Educational Guide that reveals a seldom disclosed historical truth, provides context to the social, political, and cultural content of the present and illuminates new ways of thinking about the future of America. **Exhibit 2.** The goal was to inspire further exploration of the myriad subjects set forth in the Educational Guide and their relationship to the Musical’s themes. In so doing, an

array of lesson extensions was designed to prepare students for the experience of seeing the Musical. In turn, classrooms would be enlivened and student discussion, collaboration and discovery would be nurtured.

27. The Educational Guide evidences the antithesis of Drabinsky being labeled a racist and culturally indifferent. Indeed, it is another example of how Drabinsky is at the forefront of confronting sensitive and highly controversial issues through musical theater -- a man who challenges prejudice and bigotry, and who is intolerant of a hostile work environment. All of this was undermined when Actors Equity, in sweeping fashion, falsely labeled him a racist.

**Criminal Proceeding Against Drabinsky
Dismissed in the United States. A Conviction in Canada**

28. Drabinsky's remarkable record of achievement in American musical theater was, unfortunately, put on a nearly fifteen-year pause commencing with Drabinsky's abrupt termination from Livent in August 1998. In January of the following year, the United States Attorney's Office for the Southern District of New York filed a multi-count indictment against Drabinsky charging an alleged accounting fraud scheme involving Drabinsky's theatrical entertainment company, Livent.

29. Between 1999 and 2011, Drabinsky remained actively involved in Canada developing and producing feature films, a television talent competition show, a series of live concerts, and a remount of his Tony Award winning production of *Barrymore*, once again starring Christopher Plummer.

30. Though the charges generated substantial publicity in both the United States and Canada, Drabinsky, a resident and citizen of Canada, was never subjected to extradition proceedings. In the aftermath of his indictment, the U.S. federal government

never presented in court any evidence of Drabinsky's involvement in the charged misconduct, or otherwise pursued his prosecution. The charges remained dormant for many years, but they persisted as an impediment to Drabinsky being able to travel to the United States.

31. Beginning in the summer of 2016 and continuing for the next two years, Drabinsky, through legal counsel in New York, engaged in discussions and correspondence with the federal authorities. The submissions of Drabinsky's counsel, backed by supporting letters, records, and other documentation, were all made to satisfy the United States government that given many factors, any prosecution and punishment of Drabinsky would not serve the interests of justice.

32. Drabinsky's efforts were successful. On June 25, 2018, the United States federal prosecutor primarily responsible for Drabinsky's case, with the concurrence of the highest-ranking authority in her office, formally asked a United States federal judge to dismiss all charges against Drabinsky. The judge granted the government's application the very next day, permanently dismissing all charges against Drabinsky without the imposition of any penalties or stigma. With the saga finally at an end and the cloud that had hung over Drabinsky's head for so long lifted, he was, at last, free to return to the United States and to the musical theater he had nurtured and loved for decades. He was granted an O-1 visa almost immediately for this purpose.

33. While the United States dropped all charges with prejudice in 2018, in 2009 Drabinsky (together with others) was convicted in Canada for fraud in relation to the financial statements of Livent, Inc. between 1995 – 1998.

34. Drabinsky completed his 17 months of incarceration in Canada and all parole conditions have expired. All civil claims against Drabinsky arising out of the Livent matter have been resolved satisfactorily and no amounts were owing prior to the events involving Actors Equity set out herein. As of the date hereof, it is anticipated that Drabinsky will receive a full pardon in Canada regarding the matter, in the near future.

35. Drabinsky could have been effectively foreclosed from returning to the United States, but his passion for cultivating and producing musical theater never wavered. In his quest to return to the United States, Drabinsky received the unflagging support and encouragement of numerous well-respected writers, composers, directors, and other live theatrical talents, many of whom had written letters to the U.S. prosecutor, as a testament to Drabinsky's indispensable gifts and high regard in the industry. They were allies in Drabinsky's efforts to have the criminal charges dropped to enable him to return to the United States and once again contribute to the production of live musical theater, and the causes he advanced.

Drabinsky Attacks America's History of Racism in His Productions, Winning Multiple Tony Awards

36. In the early 1990's, Drabinsky was the lead creative producer of *ShowBoat*, which opened on Broadway in October 1994. *ShowBoat* ran for 947 performances and grossed \$89,171,712.

37. In 1927, Jerome Kern and Oscar Hammerstein II opened a theatrical discussion about race relations in the United States with their breakthrough musical *ShowBoat*. The musical is about love of theatre and love of family; it honors the continuity of generations. *ShowBoat* follows the lives of Captain Andy, his wife Parthy, daughter Magnolia, and the performers, stagehands and dock workers on the Cotton Blossom, a Mississippi River show

boat, over a span of 40 years from 1887 to 1927. Its themes consist of racial prejudice, interracial marriage (miscegenation), and bigotry. The Black American experience in both its triumph and its tragedy is at the heart of the show's perception of America.

38. From the inception of the project in Toronto in 1992, the musical was met with aggressive political and social discourse – much of it negative, including 100 people per evening picketing in front of the theater prior to the first Toronto previews.

39. John Lahr, a preeminent writer for the *New Yorker Magazine*, noted:

...the Coalition to Stop Show Boat, a collection mostly of Toronto's black community, has been trying to run 'Show Boat' aground. The Coalition has been hard at it, lobbying Ontario's Human Rights Commission and, even before previews began, mounting weekly demonstrations of as many as a hundred people outside the theatre. At the preview I saw, there was a whiff of Weimer and autumn in the air. About forty armed police, some helmeted and mounted, stood behind police barricades outside the building while inside, plainclothesmen, stationed at every exit of the massive eighteen-hundred-and-fifty-seat Main Stage Theatre, watched the audience.

Exhibit 3, p. 124.

40. Upon the Toronto press opening in October 1993, Lahr praised the production: "[D]escribing racism doesn't make '*ShowBoat*' racist. The production is meticulous in honoring the influence of black culture not just in the making of the nation's wealth but, through music, in the making of its modern spirit." **Exhibit 3**, p. 125. He concludes: "In bringing together good and bad, optimism and outrage, celebration, and resignation, "Show Boat" demanded a new maturity from musical theatre and from its audience. "Show Boat" insists -- and Prince's expert production makes the point irresistible -- that the past must be remembered for its sins as well as for its triumphs. . . [t]he show chronicles slavery not to condone it but to deplore it." **Exhibit 3**, p. 126. Lahr's statement reflected Drabinsky's sole intent in producing Prince's restoration.

41. Drabinsky took on another formidable work when he produced *Ragtime*, which ran on Broadway beginning December 1997 for 834 performances and grossed \$77,694,537. *Ragtime*, an adaptation of Edgar Doctorow's multi-award-winning novel⁴ is an exuberant historical fantasia, a tapestry of fiction and fact. It also deals with America's violent emergence as an industrial giant, a turbulent time when the United States and its people were undergoing seismic social, political and economic transformation. *Ragtime* depicts, at the turn of the 20th century, the lives of a wealthy white Anglo-Saxon Protestant family, a father and daughter (both Jewish immigrants) and a Black American ragtime musician in Harlem and his love for a strong-willed and passionately idealistic Black American woman. The production, once again, brought the pernicious issue of racism front-and-center, with the script written by the much-heralded Terrence McNally, containing racial slurs in several instances, including the "N-word". **Exhibit 4.**

42. The use of the "N-word" in *Ragtime* still elicits controversy, even in high school productions. For example, in January 2017, a local branch of the NAACP intervened and condemned Cherry Hill High School East's (in New Jersey) decision to present a production of *Ragtime* that included the racial slurs contained in McNally's script. **Exhibit 5.** The school responded to the NAACP's condemnation by announcing it would "remove the offensive language from the enacted script." *Id.* On January 24, 2017, the district school board met to discuss the school's decision. *Id.* At the school board meeting, students involved in the production made passionate pleas to keep the censored language, arguing that the musical is a medium through which racism can be understood, tackled and overcome. *Id.* On January 27, 2017, the superintendent of schools in Cherry Hill reversed the decision of the school to remove

⁴Doctorow is considered by many to be one of America's most formidable and lauded authors in the last half of the 20th century.

the offensive language and permitted *Ragtime* to be presented by the students as originally written by McNally. **Exhibit 6.**

43. Most significantly, the decision was supported by The Dramatists' Guild of America and the Arts Integrity Initiative, which submitted a letter to the Cherry Hill school board on January 24, 2017, the day of the school board meeting, that stated:

Ragtime's use of racial slurs is an historically accurate and necessary aspect of a play that explores race relations in the early 1900s. *Ragtime* helps minors understand the brutalities of racism and the anger that has historically accumulated, partly through the use of racially offensive language. In contrast, censorship of such language ignores historical reality and presents a falsified, whitewashed view of race relations. Censoring the play will only perpetuate ignorance of our past.

While we empathize with concerns about the emotionally disturbing effects of hearing or uttering racial slurs, we believe such concerns are to be resolved through educational means, not by censoring a renowned text. In our experience, similar concerns (around productions of *To Kill a Mockingbird* or *Of Mice and Men*, for instance) have best been confronted through dialogue rather than censorship.

Exhibit 5.

The Production of *Paradise Square*

44. Prepared to take on his next meaningful production, in 2013, Drabinsky chose to develop and produce *Paradise Square*, a musical that brings to the forefront the racial conflict in the Five Points neighborhood of New York City in the 1860's when an accidental society of Black and Irish Americans lived side by side. While the Civil War raged on, the two downtrodden and scorned communities found and loved each other and embraced each other's cultures. The deadly New York draft riots which exploded over 5 days in the summer of 1863 targeted Black Americans and interracial couples and became the largest civil insurrection in U.S. history. Once again, Drabinsky was instrumental in nurturing a musical which created

leading and other significant roles for Black American performers, which is still a rare occurrence in an industry that continues to struggle to highlight diverse talent.

45. As is typical of musical productions intended for Broadway, *Paradise Square*'s production, in addition to the numerous readings and workshops, evolved over three phases, each phase being produced in a different city. The first phase of the Musical was mounted at the prestigious non-profit League Of Resident Theaters Association ("LORT") facility,⁵ Berkeley Repertory Theater in Berkeley, California ("BRT"). BRT was the producer of the first phase and credited as sole producer. The second phase was mounted at the James M. Nederlander Theater in Chicago, Illinois. The final incarnation of the Musical was mounted at the Ethel Barrymore Theater on Broadway. Both the second and third phases were produced by The Broadway Partnership.

46. Drabinsky was the credited lead creative producer of the Musical *only* for phase two and phase three. At no time during any of the three phases of the *Paradise Square* productions was Drabinsky a partner or member of BRT or the Broadway Partnership or any other of the Musical's legal entities, nor did he have signing authority on any bank instrument or bank check, nor was he authorized to execute any legal documents on behalf of the various productions of the Musical. As such, Drabinsky was not responsible for the payment of the salary of any actors, creative individuals, or anyone else associated with the various productions, nor was he responsible for the payment of any invoices for the productions.

The BRT Production (Phase 1)

47. *Paradise Square* previewed in Berkeley, California on December 27, 2018, with a press opening at BRT on January 10, 2019.

48. As the *San Jose Mercury News* reported: **Exhibit 7.**

⁵ LORT administers the primary national not-for-profit collective bargaining agreements with Actors Equity.

“The stirring new Berkely Rep musical captures improbable racial utopia in Civil War-era New York...It boasts a particularly impressive creative team...Bill T. Jones’ choreography is well worth the price of admission...stunning dynamic, evocative and unconventional.”

The COVID Pandemic and George Floyd

49. One year following the performances at BRT, cataclysmic events shook the foundations of America and arguably altered the landscape of the theatre industry forever.

50. Specifically, on or about March 12, 2020, because of the COVID pandemic, theaters across North America began to shut down. On Broadway, facing government restrictions on audience size and concern from actors and audiences about severe health risks from the COVID outbreak, the theater industry shuttered. Broadway did not reopen until August 22, 2021.

51. On the evening of May 25, 2020, white Minneapolis police officer Derek Chauvin killed George Floyd, a Black American, by kneeling on his neck for almost 10 minutes. Floyd’s death, as video recorded by bystanders and broadcast unceasingly on worldwide television, touched off what may have been the largest series of racial protests in United States history and a nationwide reckoning on the issue of race and policing.

52. Those two events profoundly affected the second and third phases of the Musical. First, there was a thirty-month hiatus between BRT and the second phase of the Musical, and second, the George Floyd incident brought to the forefront the racial issues that continued and continue to plague America long after the events depicted in the Musical.

53. In the summer 2020, in the depth of the lockdowns, Drabinsky proposed a way to temporarily employ the Cast. A promotional 6 ½ minute audio/video recording of *Paradise Square* consisting of a hybrid of music selections from the Musical as of that date, was produced by Drabinsky featuring actors from BRT, augmented by selected other actors from a

workshop of the Musical staged in New York City during August 2019. Drabinsky included the following statement, written by Drabinsky, at the outset of the video: “The artists and producer involved in the creation of this video stand in solidarity with all those who march against the evil of racial injustice. Black Stories Matter...Black Lives Matter.”

54. In January 2021, Drabinsky arranged for the music video, including his statement, to be launched on the CBS Sunday Morning website where it has been seen by tens of thousands of people around the world.

55. The successful BRT production (extended twice by audience demand) led Drabinsky to commence negotiations with the Nederlander family, who own and operate the Nederlander Theatre in Chicago, a theatre restored under Drabinsky’s guidance between 1995 and 1998 at a cost of \$30 million and which has received several restoration awards. Drabinsky reasoned that Chicago would be the bridge to Broadway.

56. On March 11, 2021, the Nederlander organization and the Broadway Partnership entered into an agreement for a five-week run of *Paradise Square* in Chicago in the fall of 2021, representing the second phase of the evolution of the Musical. On July 20, 2021, the Broadway Partnership entered into an agreement with the Shubert Organization for an open-ended run of *Paradise Square* on Broadway, at the Barrymore Theatre, to commence in the late winter of 2022.

The Chicago Production (Phase 2)

57. Notwithstanding the eighteen-month COVID-induced shutdown that decimated the theater industry, Drabinsky forged ahead with the Musical. For the Chicago production, Drabinsky assembled a 36-member cast, including 18 Black Americans, many of whom had never performed on Broadway. *Paradise Square* became the first large scale new Musical to be produced in America since the inception of COVID.

58. Rehearsals commenced in Chicago on September 13, 2021. The first preview performance occurred on November 2, 2021, with a press opening on November 17, 2021. During the months of September through December 2021, notwithstanding the widespread Delta variant outbreak of COVID in Chicago, there was not a single case of COVID amongst the Cast, creative team, crew or musicians because of the protective measures initiated by Drabinsky and the GM.

The Conduct of the Cast in Chicago is Ignored by Actors Equity

59. During Phase 2, Actors Equity was either unable or unwilling to control the conduct of the Cast. As outlined above, despite signing binding contracts for both the Chicago and Broadway engagements of the Musical, the Irish Step Dance specialty choreographers and members of the Cast, J.O., and G.C., during the first two weeks of rehearsals, demanded revisions to the existing terms of their Actors Equity contracts which also governed payment for their choreographic services. In breach of their contracts, **Exhibit 8**, J.O. and G.C. refused to provide their choreographic services until revisions were agreed to by the Broadway Partnership. Further, J.O. and G.C. misrepresented to the Cast that their contracts did not include payment for their choreographic services. In doing so, J.O. and G.C. poisoned the morale of early Cast rehearsals. Without the obligation to do so, and in the face of ongoing rehearsal work stoppages caused by the egregious conduct of J.O. and G.C., Drabinsky recommended that the Broadway Partnership accommodate their illegal demands to alleviate further disruptions and disharmony amongst the Cast. Drabinsky understood that at all times Actors Equity was fully apprised, including by the Musical's production stage manager K.M., of the inappropriate and illegal demands of J.O. and G.C.

The October 2, 2021 Meeting in Chicago

60. Drabinsky appreciated that the Cast, during rehearsals, continued to wrestle with the exceedingly difficult issues of race and prejudice raised in the Musical, in addition to the unforeseen distractions caused by J.O. and G.C. As a result, to help unify the Cast and creative team, Drabinsky called a meeting on October 2, 2021. An open discussion was held with Drabinsky's understanding that Actors Equity was present at the meeting.

61. At the October 2nd meeting, Drabinsky seized the opportunity to explain to the Cast that he was extremely aware of the painful issues raised in the Musical as he had faced similar issues in his prior productions including the 1993 production of *ShowBoat*, a musical that sharply denounced racism more strongly than any other American musical in the early history of American theatre. The book of *ShowBoat* was written by the acclaimed lyricist Oscar Hammerstein II.

62. During the development of the restoration of *ShowBoat*, Drabinsky (in collaboration with director Hal Prince, who was also responsible for writing the revisions to the 1927 Hammerstein II script), decided to retain the original opening bitter refrain of Ol' Man River in order to protect the integrity of Hammerstein II's intention to shock audiences into fully understanding the harsh reality of the Black experience in America and in connection therewith, the sins of American society.⁶

63. Drabinsky explained to the Cast how his decision to produce *ShowBoat* in Toronto led to ongoing protests by Toronto's Black Caribbean community. As the weeks dragged on, the vile rhetoric spread rampantly. Drabinsky became the subject of scurrilous, hysterical anti-Semitic catcalling from this community for almost nine months prior to the first

⁶ As Lahr wrote: The "shocking, bitter refrain [in Ol' Man River] was truer to the outraged spirit of the slaves and to the metre of the song, whose fury, even in its bowdlerized form is clear for those who have ears to hear." P. 124.

public performance. He went on to discuss how he and Prince engaged in an ongoing, strenuous debate of whether the horrific words in the first lyrics of Ol' Man River should remain in the musical, as they were originally written for the 1927 production.

64. Drabinsky consulted widely inside Canada and out with such high profile and respected Black leaders as entertainer Harry Belafonte and Vernon Jordan, who led President Clinton's transition team when he assumed office. Both men encouraged Drabinsky to use the original lyrics, because they reflected the history and social condition of Post-Reconstruction America.

65. Drabinsky related his painful experience to the Cast so they would better understand that these racial issues, while always complex and sometimes overwhelming had to be strongly confronted. Drabinsky believed that the story of his history with *ShowBoat* would help strengthen the Cast's resolve to join hands in rehearsal and performance and powerfully convey the Musical's messages to audiences and in so doing, further honor the influence of Black American culture through music and dance.

66. Without any prior notice, on October 25, 2021, Actors Equity sent a remarkably harsh, damaging, disparaging, and defamatory letter addressed to the GM in which Actors Equity falsely and wrongfully accused Drabinsky of using "inappropriate and unwanted racial slurs during rehearsals, creating a hostile work environment and violating the 'Broadway League-Actors' Return to Work Memorandum of Agreement – Broadway and Sit-Downs' provisions regarding "Returning to Workplace Free of Discrimination, Harassment and Bullying." **Exhibit 9.** The letter was copied to Mary McColl, Executive Director, AEA; Calandra Hackney, Assistant Executive Director, AEA; Terry Schnuck, Producer; Alison

Corinotis, Broadway League. In the same letter, Actors Equity recklessly demanded “the immediate removal of Garth Drabinsky from the workplace for the safety of our members.”

67. As the entire purpose of the October 2nd meeting and the discussion which ensued was to bring to the forefront the serious racial issues that Drabinsky boldly and unhesitatingly addressed in a number of his productions decades ago, Actors Equity’s conduct in publishing the letter was malicious.

68. Actors Equity knowingly created an intentionally fictitious basis upon which to viciously attack Drabinsky and fanned the flames of discontent on the part of certain members of the Cast against Drabinsky.

Chicago Point of Origin

69. Under the CBA, Chicago was designated a “point of origin” for the Musical, meaning that the Cast of the Chicago production contractually agreed to participate in all rehearsals and performances of the Musical without being reimbursed for housing or *per diem* living expenses. In other words, the Broadway Partnership was under no obligation to pay for any living arrangements in Chicago for the Cast. The minimum weekly salary of \$2,381.08 was paid to each member of the Cast during rehearsal and this amount varied upwards during performances.

70. The designation of Chicago as a “point of origin” was crucial to the Musical. It saved the Broadway Partnership production expenses of \$500,000 over the rehearsal and performance period in Chicago. The production did not have the benefit of any insurance policy that would cover the horrendous cost of the Musical being shut down due to COVID. This form of insurance coverage was not available to any musical which opened in the United States following the COVID shutdown on March 12, 2020. **Exhibit 10.** The risk of a COVID shutdown in Chicago was real and significant. As such, the Broadway Partnership had to be

extraordinarily prudent in scrutinizing all expenses of the Musical in order to financially withstand any anticipated cancellation of performances because of a COVID outbreak. In short, producing theatre in the time of COVID was not only uncharted territory, but precarious.

71. At the October 2nd meeting, complaints from the Cast emerged about the payment for housing while in Chicago. Drabinsky reminded the Cast that in April and May 2021, notwithstanding that there was no obligation to do so and as an accommodation to the Cast, he successfully urged the Broadway Partnership to loan, without interest, any member of the Cast who made a request, the funds required to cover initial rent deposits while in Chicago.

72. Numerous members of the Cast took advantage of Drabinsky and the Broadway Partnership's generosity and received interest free loans including, J.C.D. (\$2,120), C.C. (\$1,000), S.D. (\$1,825), S.E. (\$7,519), G.C. (\$1,770), J.O. (\$1,770), E.S. (\$7,329), A.W. (\$1,700) and H.K.W. (\$1,575).

In Violation of the CBA, Actors Equity Refuses to Pursue Sexual Harassment Claims By Its Own Members

73. During the Chicago rehearsals, the GM received formal complaints from certain members of the Cast and creative team of both harassment and sexual harassment by another member of the Cast, J.H., that purportedly had occurred in Berkeley, subsequent to Berkeley, and during Chicago rehearsals. Further, unbeknownst to Drabinsky (who always had minimal contact with J.H.), during contractual negotiations for Chicago, J.H. had induced certain members of the Cast and creative team into having sexual relations with him by falsely claiming that because of close administrative ties with Drabinsky, J.H. could assist these members in securing more favorable contractual terms in their negotiations with the Broadway Partnership.

The allegations against J.H. were extremely alarming, and Drabinsky and the GM dealt with them decisively.

74. Initially, the Broadway Partnership attempted to resolve the complaints against JH internally by insisting JH attend a meeting with the GM to address the complaints. **Exhibit 11.**

75. After the meeting but on the same day, the GM contacted Actors Equity and made it aware of the allegations by its members against J.H. Shockingly, Actors Equity refused to intervene. Its only response was to send one dismissive e-mail to the GM informing him “it is the employer’s responsibility to provide a workplace free of harassment, discrimination and bullying,” and “requesting that you inform us of the steps you are taking to address these concerns.” **Exhibit 12.** This deflective response showed no concern by Actors Equity to protect its members which is contrary to the very essence of its existence and contrary to the CBA.

76. Actors Equity refused to acknowledge and support Drabinsky’s incisive intervention, compounding its previous wrongful labelling of Drabinsky as having created a “hostile work environment” despite his efforts to the contrary.

77. Moreover, Actors Equity violated its *own* rules when it failed to deal with the allegations of harassment and sexual harassment reported to it by its members and the GM and failed to inform its members of the appropriate procedures under the CBA.

78. Specifically, the CBA provides, at Section 43(B), that “[s]exual harassment [and bullying] constitute unlawful discrimination ...” **Exhibit 13.** The CBA goes on to state “harassment and bullying are strictly prohibited whether committed by supervisory or non-supervisory personnel, management, employees, or third parties.” *Id.* at Section 43(C).

79. The CBA further provides a detailed procedure for members of Actors Equity to deal with allegations of harassment and bullying:

The Actor or applicant shall submit to Equity any claimed violation of these provisions within 28 days of the time when the claim arose or when the Actor became aware of the alleged discrimination, whichever is later. Equity shall send written notice of the claim to the League and the Producer, in accordance with Rule 4(A)(2) within five business days thereafter. Any claim for which timely notice is not given shall be barred unless unusual circumstances can be shown for such delay. The Grievance Committee shall meet to consider the claim immediately thereafter.

Id. at 42(F).

80. Instead of sending a notice of the claims to the Broadway League and the Broadway Partnership several weeks earlier, and subsequently convening a grievance committee meeting immediately thereafter, as required by the CBA, Actors Equity did nothing and left these critical issues to Drabinsky and the GM to resolve, in an environment where it had tarnished Drabinsky's reputation.

81. On November 27, 2021, the GM, at Drabinsky's direction, engaged a New York based Human Resources ("HR") consulting firm, K&K Reset, LLC, ("K&K") to assist *Paradise Square* with resolving the allegations against J.H., as well as to participate in other equity, diversity, and inclusion matters. **Exhibit 14.**

82. On December 27, 2021, the GM summarily terminated J.H.'s employment based on the results of the K&K investigation. **Exhibit 15.**

The Musical Receives Acclaim in Chicago

83. With Drabinsky as lead creative producer, the Chicago production was an artistic success, receiving numerous published rave reviews and enthusiastic widespread social media commentary. As the *Chicago Tribune* critic Chris Jones proclaimed, "to pull a project of this

scope and scale together at all in this incredibly challenging COVID era must have been a herculean task.”

84. The review continued: “[t]his is an honorable, serious, talent-stacked show wrestling with issues of race and American history...produced by Garth Drabinsky.”

85. Catey Sullivan of the Chicago Sun-Times raved “Visually lush, emotionally intricate storytelling. A production that deserves an audience that will cheer for it, loudly. It’s a rich, relevant world inside an outlier bar in the eye of a maelstrom.” **Exhibit 16.**

Actors Equity Manufactures A “LORT” Employment Grievance Against the Broadway Partnership

86. In early 2021, Drabinsky and the creative team, on behalf of the Broadway Partnership, decided that 11 actors and 3 stage managers employed by BRT in the BRT production would not be employed by the Broadway Partnership for the Chicago and Broadway productions. There were several reasons. Substantial changes to the script, music and lyrics were made subsequent to the BRT production and subsequent to the ensuing New York workshop in August 2019. The changes were so substantial that less than 1,000 words of the BRT script written by Marcus Gardley remained, and certain characters in the Musical were eliminated prior to commencement of rehearsals in Chicago. The creative team felt that a number of the BRT cast could not adequately meet the artistic demands of their roles and that all the BRT stage management lacked the ability or experience required for Chicago and Broadway.

87. In another gross act of improper conduct on December 22, 2021, Actors Equity accused the Broadway Partnership of a “LORT employee transfer violation” pursuant to Paragraph 71 of the CBA that, generally, requires a production company or producer to reemploy all the actors engaged in a LORT facility production when it transfers to a

“production contract” under the CBA. Actors Equity specifically and falsely accused the Broadway Partnership of violating the CBA because, as alleged, certain BRT actors and stage management were not employed by the Broadway Partnership for the Chicago production. The LORT production never transferred to a “production contract,” as BRT and *not* the Broadway Partnership was the sole producer of the BRT production and employer of the BRT cast. In addition, the Broadway Partnership never used the BRT production in lieu of “rehearsal” or an “out-of-town tryout” under the CBA. The rehearsal process under the sole auspices of the Broadway Partnership took place during both a two-week workshop in August 2019 in New York and during the first seven weeks in Chicago. The out-of-town tryout of the Musical was clearly the Chicago (Phase 2) production.

88. Notwithstanding that the Broadway Partnership was under no obligation to hire the cast or stage management from the BRT production for Chicago or Broadway, Drabinsky, as lead creative producer, took every measure to encourage the Broadway Partnership to employ all appropriate members of the BRT production.

89. In connection therewith, seven actors (T.A.C., D.H., E.L., C.M.R., M.T., M.U. and B.W.) were not employed by the Broadway Partnership. **Exhibit 17.**

90. Further, three stage managers (C.M., B.N. and C.W.) were not employed because they had no experience with a first-class, large scale musical production, most importantly, interfacing with stage crew members from the major unions in Chicago and New York. **Exhibit 17.**

91. Further, prior to the BRT production, two members of the BRT cast (actors B.R. and C.S.) who were not employed by the Broadway Partnership, had already negotiated and

agreed to a buyout if they were not employed for Broadway or any other earlier first-class or large-scale production. **Exhibit 17.**

92. Further, a member of the deck crew (K.S.) was not within Actors Equity jurisdiction as she was a non-member of Actors Equity. **Exhibit 17.**

93. Further, a member of the BRT cast (B.W.), was offered a contract for Chicago and Broadway but he refused the offer as he joined the Broadway production of *Ain't Too Proud*, which reopened earlier than the scheduled Broadway opening of the Musical. After *Ain't Too Proud* prematurely closed, the Broadway Partnership, at Drabinsky's urging, immediately asked B.W. to become a member of the Cast for Broadway. On February 9, 2022, B.W. concluded an agreement with the Broadway Partnership. **Exhibit 17.**

94. Finally, a member of the BRT cast (C.R.), stated he would be leaving the Musical after the BRT production because of his artistic differences with the creative team. Thus, he had no intention of ever continuing with the Musical wherever or whenever it was produced. **Exhibit 17.**

95. In furtherance of its fabricated claim, on January 28, 2022, Actors Equity submitted a grievance demanding "Confirmation of offers/buyouts to the applicable actors and stage managers from the Berkeley Rep LORT production."

Actors Equity Refuses to Release The Chicago Bond

96. On or about August 24, 2021, prior to the first rehearsal in Chicago, Actors Equity entered into a security agreement ("Security Agreement") with the Broadway Partnership wherein the Broadway Partnership posted a bond in favor of Actors Equity in the amount of \$270,667.00 as security (the "Chicago Bond") to be liquidated by Actors Equity in whole or in part, in the event of a breach by the Broadway Partnership of any material term of

the CBA or any other relevant agreement governing members of Actors Equity engaged by the Broadway Partnership for the Chicago (Phase 2) production. **Exhibit 18.**

97. The Bond represented two weeks of salary, plus benefits, for all Actors Equity members engaged by the Broadway Partnership.

98. After the completion of all Chicago performances, Actors Equity wrongfully refused to return the Chicago Bond to the Broadway Partnership on a timely basis. Actors Equity's refusal to return the Chicago Bond strained the available working capital of the Musical.

99. Further, Actors Equity, in breach of its contractual and fiduciary duties, egregiously refused to release any portion of the Chicago Bond to the Broadway Partnership months after the completion of the Chicago engagement and notwithstanding that the value of any legitimate default claimed by Actors Equity was far less than the amount of the Chicago Bond.

100. With the second phase of the Musical complete, the Cast and creative team made final preproduction preparations to debut on Broadway with the first preview of the Musical scheduled for February 22, 2022.

Paradise Square Production Services Inc. ("PSPSI") Provides a New Bond For Broadway

101. Independent of the Chicago Bond, pursuant to paragraph 65 of the CBA, the Musical was obligated to provide a bond in connection with the Broadway production (the "New York Bond").

102. On or about February 3, 2022, without the Broadway Partnership having received the return of the Chicago Bond, Actors Equity entered into a second security agreement, this time with PSPSI. PSPSI provided a new bond of \$299,711 to be liquidated by Actors Equity in whole or in part, in the event of a breach by PSPSI of any material term of the

CBA or any other relevant agreement governing members of Actors Equity engaged by the PSPSI. **Exhibit 19.**

103. The amount of the New York Bond consisted of two weeks salary plus benefits for all Actors Equity members involved in the production of Paradise Square on Broadway. In total, Actors Equity held bonds totaling \$570,378 as of the commencement of rehearsals of the Cast for Broadway.

104. On March 8, 2022, the GM requested from Actors Equity the return of the Chicago Bond citing “the inappropriate request of Equity for additional payments for certain actors and stage management participating in the Berkeley production... in lieu of being offered the opportunity to participate in the Chicago or Broadway productions.” **Exhibit 17.**

105. To date, in further breach of its contractual and fiduciary duties, Actors Equity has refused to release all or any portion of the New York Bond and the balance due the Broadway Partnership under the Chicago Bond.

The New York Production (Phase 3)

106. Notwithstanding the continuing production difficulties posed by COVID and the ongoing wrongful conduct of Actors Equity as aforesaid, the Musical forged ahead with preproduction activities and rehearsals for Broadway, undertaking strict safety measures with its entire final Chicago cast intact (with the exception of J.H.).

107. The Musical was originally scheduled to commence previews at the Barrymore Theatre on February 22, 2022. In the weeks leading up to that date, the country continued to experience a dramatic surge in COVID cases as a result of the ubiquitous Omicron variant. On January 21, 2022, the New York Times reported 720,000 new cases a day nationally. **Exhibit 20** (“Especially after this wave, the level of exhaustion in New York City cannot be exaggerated, and the level of numbness is quite significant,” said Mark D. Levine, Manhattan’s

borough president.”); (“more Americans with the virus are hospitalized than at any other point of the pandemic”).

108. Out of concern for the safety of the Cast, creative team, crew and musicians, Drabinsky in conjunction with the GM and the approval of the Shubert Organization (the landlord of the Barrymore Theatre), delayed the Musical’s rehearsals and tech schedule. The commencement of previews was moved from February 22, 2022, to March 15, 2022. The press opening was moved from March 20, 2022, to April 3, 2022.

109. As a result of the rescheduling, approximately \$500,000 of advance ticket sales were refunded, and significant additional pre-productions costs were incurred.

Actors Equity Orders an Illegal Work Stoppage for the Cast

110. Remarkably, in the face of these developments, Actors Equity once again attempted to derail the Musical when it caused an illegal work stoppage, within the first two weeks of Broadway rehearsals. This demoralized the Cast and resulted in the publication of widespread negative press coverage.

111. On February 20, 2022, Actors Equity knowingly submitted a spurious claim to the Broadway League against PSPSI, informing it of various alleged grievances including that the Cast had not received “contracts in whole, or contracts reflecting terms and conditions different than agreed to, as well as [Actors Equity] not having received the employer’s anti-harassment and antidiscrimination policy” for the Musical. **Exhibit 21.**

112. The February 20th letter of Actors Equity was unquestionably sent in the utmost bad faith. First, the Cast had been under binding contracts with the Broadway Partnership since April and May of the prior year and the Cast was being paid pursuant to those contracts. Thus, the claim that the Cast never received contracts or were operating under different terms was baseless.

113. Any delay identified in the February 20th letter was caused by certain members of the Cast attempting to renegotiate their existing binding contracts with the Broadway Partnership. While the Broadway Partnership had no obligation to do so, Drabinsky and the GM were prepared to gratuitously assist in the alleged needs of the Cast. They urged the Broadway Partnership to agree to most of the revisions requested by certain members of the Cast without any additional consideration. By 11:30pm on the evening of February 20, 2022, all Broadway contracts for the Cast were distributed to the Cast or their agents.

114. Further, an anti-harassment policy established by the Broadway Partnership was provided to Actors Equity on September 13, 2021, in Chicago. **Exhibit 22**. Only an update of the contact information for the new HR individual and other administrative staff engaged for Broadway was required to be made to the policy distributed in Chicago. A revised anti-harassment policy for Broadway was, in fact, provided to Actors Equity on February 20, 2022.

115. Based on the false pretext that PSPSI engaged in “flagrant and willful violations” of Actors Equity’s Rules, Actors Equity instructed its members to stop working effective the following day, February 21, 2022. **Exhibit 21**, notwithstanding that the Cast was only at the end of the first week of rehearsals and had an absolute contractual obligation to attend rehearsals on February 21, 2022.

116. Actors Equity ordered the Cast to meet with it “to determine how to move forward” instead of attending rehearsals on February 21, 2022. **Exhibit 21**. The Broadway League immediately notified Actors Equity that its members “do not have the right to refuse to work.” **Exhibit 23**.

117. Notwithstanding the contractual obligations of the Cast to PSPSI and the Broadway League's sternly written notification to Actors Equity, the Cast, at the wrongful direction of Actors Equity, did not attend rehearsal on February 21, 2022.

118. Enraged with Actors Equity's mandate to its members, the Broadway League, on February 22, 2022, notified Actors Equity that the Cast would not be paid for the day as a result of the illegal work stoppage on February 21, 2022, as condoned and declared by Actors Equity.

Exhibit 24.

119. In its efforts to continuously undermine the Musical and Drabinsky, and stir up further discontent amongst the Cast, on February 24, 2022, Actors Equity filed a new grievance for non-payment of the Cast during the February 21, 2022, work stoppage *that Actors Equity had illegally ordered*. **Exhibit 25** (Feb. 24, 2022, email from D. Gal at Actors Equity to J.

Lacks at the League).

120. Actors Equity's unquestionable bad faith in demanding an illegal work stoppage and further, demanding payment for the Cast for the work stoppage it ordered, was all revealed in a tweet by L.S., a member of the Cast, subsequent to the closing of the Musical:

Ooooh shit, also forgot... there was a day during rehearsals where @actorsequity told us all NOT to report to work.... So we didn't. We were then docked pay for that missed day, unbeknownst to us.... Because @broadwayleague reminded them that our contracts have a "NO STRIKE" clause and we breached our contract. 4 months later Equity finally repaid us the money we'd been deducted by PSquare.

121. Actors Equity has never disclosed to either the Broadway Partnership or PSPSI the source of the funds used to pay the Cast for the work stoppage. It is well expected that those monies wrongfully came from the balance of the two bonds that Actors Equity continues to hold and refuses to release to the Broadway Partnership and PSPSI.

The Fallout From Actors Equity's Work Stoppage Causes Severely Harmful Press Coverage for Drabinsky

122. On February 25, 2022, the Broadway League filed its grievance against Actors Equity for ordering the Cast to refuse to rehearse in violation of the “No Lockout” provision (par. 42) and the “Duties of Actors” provisions (par. 25) of the CBA. **Exhibit 26.**

123. Actors Equity's earlier decision that week to instruct the Cast to stop working, as Actors Equity had every reason to expect, resulted in widespread negative press and detrimental social media commentary against Drabinsky, including a blistering article published in *The New York Post* on February 24, 2022, titled “Broadway's ‘Paradise Square’ is a ‘nightmare’ behind the scenes. **Exhibit 27.**

124. In the article, *The New York Post* reported that “[t]he cast of the new Broadway musical ‘Paradise Square’ was instructed by their union, Actors Equity, not to show up to rehearsal on Monday” (on February 21, 2002) and that as a result, “[t]he cast members were freaked out,” so much so that “a bunch of them started calling their agents asking what to do.” **Exhibit 27.**

125. The article stated: a.) “Garth is working overtime to make sure this does not get to the media”; b.) “Sounds about right. Drabinsky is Broadway's real-life Max Bialystock”; c.) “The Canadian crook was only allowed to cross the border into the United States again in 2019 after charges here were dismissed with prejudice because he served time in Canada”; d.) “Paradise was set to be the jailbird's big return after 20 years away, but the new musical at the Ethel Barrymore Theatre is riddled with backstage drama and hemorrhaging money”; e.) “With Garth,” a source said, “it's always an ocean of red ink”; f.) “Ticket-buyers there (Chicago) were cooler to the show than Lake Michigan in December”; g.) “Drabinsky, a quick-tempered bully”;

h.) “The source added the experience has been “a nightmare” for the company”; i). “Still, it’s Drabinsky and his team who have made “Paradise” a living hell.”

126. The *New York Post* article caused havoc for the Musical and Drabinsky. The article was reprinted by The Broadway Briefing and republished on myriad internet and social media outlets. It gravely impacted morale among the Cast and creative team, which was still three weeks from the first preview. Drabinsky received a barrage of communications from his co-producers querying the legitimacy of the issues raised in the article. As a direct result of Actors Equity’s conduct reflected in the New York Post article, creditors and suppliers of services began to question the adequacy of the capitalization of the Musical and trade terms with vendors became more onerous. All of this reporting had its sole genesis in the illegal work stoppage ordered by Actors Equity, which Actors Equity knew or ought to have known would have resulted from its illegal activity and ongoing disparagement of Drabinsky.

Drabinsky Attempts to Unify the Cast Once More and is Accused of Manipulation

127. On March 1, 2022, Drabinsky called another meeting to unify and help ease the emotional stress of the Cast, and to introduce the Musical’s new Equity, Diversity and Inclusion (“EDI”) representative for Broadway, N.S.

128. Despite never being precluded from attending rehearsals or Cast meetings, Actors Equity was invited to specifically attend both the March 1st rehearsal and the meeting of the Cast called by Drabinsky.

129. At the March 1st meeting, Drabinsky once more reaffirmed to the Cast and creative team his unequivocal commitment to the Musical and that his dedication to the Musical, the Cast, and the creative team was steadfast. He explained how he had endured serious health setbacks during the early development of the Musical. In particular, in March

2015 he had been diagnosed with Stage 4 melanoma prior to one of the workshops for the Musical. Drabinsky began immunotherapy sessions in May 2015 and shortly thereafter suffered the side effects of severe colitis that brought him close to death. Drabinsky was declared to be in full remission by the summer of 2016.

130. Drabinsky received overwhelming support in writing from several of the Cast and creative team including one of the principals of the Cast and a highly respected Broadway veteran, C.K., who in response to the meeting wrote:

Hi Garth, I wanted to say thank you for the other day. I can see the huge amount of care and passion you have for this beautiful show, our industry and our company. You've put in so many hours and so much work through very difficult circumstances. I just wanted to tell you that.

Exhibit 28.

131. However, shockingly, during the meeting, the feedback from certain members of the Cast, arising directly from Actors Equity's actions to disparage Drabinsky, proved to be sharply different. In the wake of Actors Equity's previous disparaging statement of Drabinsky and its call for the work stoppage and widespread negative press resulting therefrom, certain members of the Cast surprisingly accused Drabinsky of trying to manipulate them. Actors Equity remained inexplicably silent during the meeting, refusing to intercede in support of the good faith intentions of Drabinsky. Their silence sent a message of tacit approval to the Cast of the unprofessional and disrespectful behavior from these individuals.

Paradise Square Opens on April 3 and Immediately Shuts Down Because of COVID

132. *Paradise Square's* press opening at the Barrymore Theatre was on April 3, 2022.

133. In the three preview weeks prior to the press opening, the Musical received thousands of positive social media commentaries. Weekly box office sales continued to build. The Musical was poised for sustained box office growth.

134. Prior to the press opening, there had been only one case of COVID amongst the Cast despite its rampant presence in New York City at the time. The absence of cases amongst the Cast, creative team, crew and musicians is further evidence of the rigorous measures Drabinsky took to protect them. Drabinsky had insisted on imposing more stringent COVID testing protocols than required by the CDC or Actors Equity. However, on April 7, 2022, Drabinsky and the GM learned that several company members were in breach of their contracts by not being “fully vaccinated” as that term is defined in their contracts, i.e. “Fully vaccinated includes boosters and applicable additional boosters if available”. Those members of the Cast in breach of this contractual provision at the time, included S.D. and H.K.W.

135. In advance of the press opening night, Drabinsky and the GM received myriad requests from the Cast, creative team, crew, musicians, key investors and co-producers for a traditional Broadway opening night party. Drabinsky, fearing a COVID outbreak amongst the Cast, was never in favor of a large gathering to celebrate the press opening night. However, because of the pressure exerted upon him by the February 21st work stoppage and the ensuing negative press and discontent, especially amongst the Cast, Drabinsky acquiesced to an opening night party at Bond 45 in Manhattan, attended by approximately 400 guests.

136. Several days following opening night, 35 members of the Cast, crew and musicians tested positive for COVID. The Musical was forced to shut down for thirteen consecutive performances beginning April 7, 2022, through April 17, 2022, resulting in a dramatic loss of revenues and marketing momentum. **Exhibit 29.**

137. As a result of the necessity of the COVID shutdown, the production incurred in the last three weeks of April operating losses of \$1,250,000. During the closure, the salaries of the Cast as well as the crew and musicians were obligated to be paid. In addition, PSPSI had to again refund advance ticket sales, this time between \$500,000 - \$650,000. All sales momentum from opening night was completely lost. Drabinsky was hearing that Broadway theater goers believed the Musical would never reopen.

138. The Musical reopened on April 19, 2022. However, the financial damage to the Musical that had occurred, was potentially fatal.

Drabinsky Guides the Musical Through the Awards Season

139. The awards season for Broadway each year, customarily, are the months of May and June. Drabinsky believed, based on his experience in the live theatre industry, that Tony Award nominations, Tony Award wins and a memorable Tony Award televised performance would salvage the Musical by propelling ticket sales. In mid-April 2022, Drabinsky recommended to the Musical's lead investors that it would be propitious to increase the maximum capitalization in the Broadway Partnership from \$13.5 million to \$15 million or lend funds to the Broadway Partnership to sustain the Musical during the weeks following the 13 consecutive cancelled performances.

140. Despite insurmountable odds and the multiple issues confronting the Musical, *Paradise Square* was nominated for ten Tony Awards namely, Best Musical, Best Book of a Musical, Best Original Score Written for the Theatre, Best Performance by an Actress in a Leading Role in a Musical (Joaquina Kalukango), Best Performance by an Actor in a Featured Role in a Musical (both A.J. Shively and Sidney DuPont), Best Choreographer (Bill T. Jones),

Best Scenic Design of a Musical (Allen Moyer), Best Costume Design of a Musical (Toni-Leslie James), and Best Lighting Design of Musical (Donald Holder).

141. The Musical was also nominated for: a.) 7 Outer Critics Circle Awards, including Outstanding New Broadway Musical and won for Outstanding Orchestrations; b.) 4 Drama Desk Awards and won for Outstanding Actress in a Musical and Outstanding Choreography; c.) 4 Chita Rivera Awards and won for Outstanding Choreography in a Broadway Show; and d.) 7 Antonyo Awards, including Best Musical.

142. Ms. Kalukango received a thunderous standing ovation from 6,000 audience members after her performance during the Tony Award Ceremony, which was to many of the invited throng, the highlight of the evening. In accepting her Tony Award for Best Actress in a Musical, Ms. Kalukango personally thanked Drabinsky.⁷

143. Immediately following the Tony Awards broadcast, which included Ms. Kalukango's indelible performance of the song *Let it Burn*, the Musical experienced a significant surge in ticket sales but for only two days.

The Wig Dilemma Highlights the Poisoned Environment that Actors Equity Created and Perpetuated

144. *Paradise Square* employed B.G., an experienced hair supervisor, to oversee the various wigs each actor wore during a performance.

145. During the afternoon of June 23, 2022, prior to the evening's performance, B.G. notified the GM that her assistant was out sick, and the "swing" and her sub-swing, either one of whom should have been routinely available, had both taken on other work that night with B.G.'s approval and unbeknownst to the GM. B.G. failed to ensure that either her assistant's swing or sub-swing were available for the June 23rd performance. B.G., at the GM's insistence

⁷ See <https://www.youtube.com/watch?v=s586sHWaedw>.

immediately posted the job opportunity on her union's social media pages, but was unable to secure any replacement. As a result, the performance on June 23rd was short-staffed, with no possibility to cover all the required wig changes with the reduced staff.

146. Drabinsky, as the lead creative producer, had no day-to-day responsibility or oversight of the hair department.

147. Still, on June 23rd, prior to that evening's performance, B.G. offered the GM a solution to modify the Musical's hair/wig requirements for June 23rd by keeping the Cast in one wig for the entire performance. **Exhibit 30.**

148. The GM informed the Cast on a timely basis during that day of B.G.'s recommendation:

Due to the lack of available personnel in the Hair Department for tonight's show, we have to limit our wigs to only the 'top of show' wigs for each performer. With limited staff, we are unable to accomplish any of the internal wig changes during the show. We understand that this is far from ideal and appreciate your patience as we get through this evening's performance. Thank you for understanding.

Exhibit 31.

149. J.D., a member of the Cast, immediately complained to the GM, "this is unheard of." The GM made it clear to J.D. that "if there are better solutions, I'm sure [B.G.] and Stage Management welcome them with open arms." **Exhibit 32.** There were no other solutions suggested by any member of the Cast.

150. That afternoon, H.K.W., a member of the Cast, two hours before the curtain, called the GM and indicated her refusal to perform on stage, or in fact even show up at the theatre, because there was no one to change her wig during the performance. The GM reached out to Drabinsky to see if someone with his knowledge and experience could help resolve the dilemma.

151. Drabinsky, out of complete frustration and aware that there was no viable alternative plan, called H.K.W. and informed her that her refusal to perform was a breach of her contract and implored her to do the right thing. However, H.K.W. remained adamant and refused to report to work. Once again, Actors Equity, fully aware of the dilemma caused by one of its members, refused to intercede. Further, Actors Equity failed to inform its member H.K.W. that she had the unfettered right to effect her own hair and wig changes, provided no one outside the Hair Department assisted her.

152. Two days later, H.K.W. e-mailed the GM stating:

Hello, Thursday was another very disappointing time with this *Paradise Square* experience. The gross oversight and lack of sensitivity were a slap in the face to the black women that received an email at the top of this project from Matt and Jennifer [the Hair Designer for the Musical and his assistant], stating it was going to do better and be proactive in caring for black women's hair. Being understaffed is nuanced and not what was expected. I can understand that. However, the lack of contingency plans created by anyone on our behalf is causing me a great deal of pain. I felt supremely unsupported and not thought about. Mostly, I felt a true lack of understanding of the impact it would have on us given the subject matter of this show...I am requesting some deep thought goes into having solutions for the black women in the show who have to simulate plantation work as SLAVES if we are understaffed in the near future...and understand why wearing the top of the show wigs is simply not an option for us. Do better.

Exhibit 33.

153. B.G. and the Hair and Makeup Union repeatedly failed in their attempts at finding a suitable person of color to interface with the Cast.

154. In a further response to the wig department dilemma and in another decisive act in support of the needs of the Black American members of the Cast, Drabinsky and the GM promptly hired a new, highly skilled Black American Hair Supervisor, G.B.

Drabinsky Navigates Extortion and Other Breaches by Members of the Cast

155. Actors Equity, by disseminating that Drabinsky created a hostile work environment, caused such a contaminated atmosphere amongst the Cast that Drabinsky and the GM were continuously putting out fires caused by Actors Equity. The negative and false branding of Drabinsky by Actors Equity provided members of the Cast with an escape hatch to illegally avoid their contractual obligations to PSPSI and the Broadway Partnership without any consequence from Actors Equity.

156. First, K.B.W., a swing and assistant dance captain, had a one-year agreement that allowed her to leave the Musical only if she was offered a role in a “qualifying” production.

Exhibit 34. Notwithstanding the specific language of her agreement, on June 22, 2022, K.B.W. informed PSPSI that she was quitting the production on four days’ notice without being offered a role in a “qualifying” production. In her termination notice, K.B.W. specifically cited the allegations perpetuated by Actors Equity that Drabinsky was “unsafe” to work with and the “hostile work environment” as the reasons for her quitting. K.B.W. also stated: “in addition to the hostile work environment . . . the lead producer’s behavior has caused me trauma.” **Exhibit 35.**

157. K.B.W.’s cited reasons were completely fabricated. Six days earlier, K.B.W. stated the following in an email to Drabinsky:

Congratulations on the win on Sunday night! Paradise Square certainly won the night, no matter how many trophies were won.

This show is incredibly special, as you know, and it is an honor to be part of it. Your dedication to making it happen is apparent, and I thank you for the opportunity.

Exhibit 36. Clearly, there was no ‘hostile work environment’ or “trauma” revealed by K.B.W. She then went on to state:

I would like to offer a trade. If you grant me this leave of absence, I will drop the issue of payment for the breach of contract and ask AEA [Actors Equity] to also drop the grievance they have filed on my behalf.”

K.B.W then suggested that Drabinsky consider hiring her friend:

... A friend and ‘Broadway Baby,’ [S.M.], has actually approached me asking if we are looking for vacation swings, and she would be perfect.

Exhibit 36.

158. K.B.W.’s claim of a contractual breach was wrong because all members of the Cast were not asked to perform at the Tony Awards, the only case when PSPSI was obligated to also ask K.B.W. to perform. The suggestion that she was subjected to a hostile work environment and “trauma” at the hands of Drabinsky was disingenuous given her statement that her “friend and ‘Broadway Baby’ ... would be perfect” to replace K.B.W. in the cast. She was only using Actors Equity’s deplorable defamatory accusations as a basis to pressure Drabinsky and circumvent her own contractual obligations.

159. In another instance during the same time period, R.V., the production stage manager, for reasons attributable to failures in his performance, left the Musical without providing the requisite four-week notice required under his contract. In another stunning display of unprofessionalism, R.V. left the Musical literally between a matinee and evening performance on Wednesday, June 29, 2022. **Exhibit 37.**

160. R.V., like K.B.W., cited Actors Equity’s malicious allegations against Drabinsky that he was “unsafe” for the workplace. *Id.* (“I understand that I have not given the contractually obligated 4 weeks’ notice for resignation but I have done so because I have been under extreme duress . . . I have been treated abusively by Garth Drabinsky for situations beyond my control.”). R.V.’s employment with the Musical began on March 15, 2022, initially as assistant stage manager. Subsequently, on May 24, 2022, R.V. was appointed production stage manager

by the GM with Drabinsky's approval. During his time as production stage manager, R.V. was responsible for issuing over 40 stage management performance reports. Consistently, these reports only glowed about the Musical without a single element of derision referenced against the Musical or Drabinsky. **Exhibit 38.**

161. In another display of unethical and illegal conduct, G.C. and J.O. sought to extort from the GM \$11,200 on account of past due royalties before the Friday night performance of the closing weekend of the Musical. The alleged obligation to pay these past due royalties was the subject of an ongoing arbitration previously initiated by the Stage Directors and Choreographers Society. On July 15, 2022, at 4:00 pm, G.C. arrived unannounced at the GM's office and asserted that if he and J.O. did not immediately receive a wire initiated by the GM in the amount of \$11,200, the Cast would not perform the choreography of G.C. and J.O. for the closing weekend's four, nearly sold-out performances. **Exhibit 39** ("being held hostage by G. C. demanding payment or his choreography being pulled from show tonight. . . Help. I can't call Garth with G.C. here, don't know what to do. Show may get cancelled."). The GM was compelled to write G.C. and J.O. checks totaling \$10,575. *Id.* ("I [am] shaken by this hostile interaction, as I've never before experienced such blatant extortion and reckless disregard for union and legal protocols.").

162. Actors Equity member K.M. was engaged by the Broadway Partnership in June 2021 as the Musical's Production Stage Manager for the Chicago engagement and initially for Broadway. Her principal responsibilities were to facilitate the rehearsal and tech process of the Musical in accordance with the approval of Drabinsky, the director, and the GM, and commencing with the first performance in each city, to call the cues of each show, maintain the artistic integrity of the Musical as established by the director, and rehearse understudies, swings

and actor replacements. At no time did the GM or Drabinsky insist that K.M. violate any CBA provision.

163. On the July 19, 2022, K.M. provided an oral statement to Variety which was published. The statement is yet another example of the poisoned environment established and perpetuated by Actors Equity. It also exemplifies K.M.'s reckless, callous and fabricated conduct. K.M. stated the following:

The show was never correctly budgeted...In my opinion, Garth felt by cutting back on labor, he could do the show more cheaply. But all that did was put more pressure on everyone else to make up for his failings. In my opinion, we had to do things in a speed and manner that were not healthy or safe.

164. K.M.'s responsibilities *never* included her participation in any material financial element of the production, including the preparation of preproduction and weekly operating budgets and salary negotiations.

165. At no time was K.M. consulted by the GM in the preparation of the load-in or tech budgets for Chicago or Broadway, nor did Drabinsky request or insist that the GM consult with her. K.M. was only consulted on scheduling issues regarding rehearsals and tech, but the final scheduling decisions always remained within the jurisdiction of the GM, with Drabinsky's approval. All schedules were established in accordance with rigorous budget parameters set by the GM.

166. K.M.'s Variety statement went on to declare publicly:

Sometimes people get behind, but [when that happens], it's not because the producer decided not to pay any overtime for the show. [Garth] wouldn't allow anybody to work past 40 hours in the initial production period because, in my opinion, there were financial concerns, so he kept cutting back on labor.

167. During the load-in and tech periods for both Chicago and Broadway, Drabinsky instructed the GM that the Musical incur as little overtime expense as possible, in order to preserve contingency funds in the case of a COVID shutdown. Nevertheless, substantial

overtime, authorized by the GM and approved by Drabinsky, was incurred in Chicago by virtually all departments including music, carpentry, lighting, sound, and projections, in order to maintain the tech schedule.

168. The initial Broadway rehearsal and tech schedule established by the GM was structured having regard to the Musical's seven-week rehearsal and tech period plus five weeks of performances in Chicago. It called for one week of rehearsal (to accommodate any script, music, and choreographic modifications from Chicago) and two weeks of tech. Drabinsky unilaterally decided to extend the rehearsal and tech schedule by one additional week for the health and safety of the Cast.

169. Significantly, in the two weeks of tech in advance of the first preview performance on Broadway, Drabinsky approved the GM's request for over 1,500 hours of overtime for the crew and musicians, the financial equivalent of 20 men and women working 3 additional 40-hour weeks at straight time.

170. A fully costumed dress rehearsal was scheduled for the evening of March 14, 2022. The dress rehearsal was performed to such an exceptional level that a second costumed dress rehearsal scheduled for Tuesday afternoon, March 15th, was cancelled and that time was used only for polishing certain scenes and transitions prior to the first preview performance. The social media comments after that performance were extraordinary.

171. K.M.'s deleterious statements to Variety are also incongruent with the fact that subsequent to her April 19, 2022 resignation letter from the Musical (with no reasons cited) she readily agreed to return to the production as a substitute stage manager for four performances, in late June 2022.

172. In stark contrast to K.M.’s fabricated statement, K.M.’s first assistant stage manager, L.M., during his contract extension negotiations with the GM recounted his Chicago experience in a February 23, 2022 email to the GM as follows: “I have truly enjoyed my time at Paradise Square and am grateful for the opportunity to work on this terrific show, especially after this pandemic.”

173. In summary, Actors Equity’s disparaging conduct became a pretext which its members took as a license to repeatedly and conveniently breach their agreements with the Broadway Partnership and PSPSI.

174. During a time when the Musical was faced with financial challenges because of the COVID pandemic, rather than work in concert with Drabinsky and the GM, Actors Equity engaged in cruel, extreme and deleterious conduct to harm the Musical and Drabinsky. Actors Equity’s malicious actions toward Drabinsky seriously damaged a leader in the musical theater industry, significantly disabling his future ability to continue to creatively produce the Musical and musical theatre in general, on Broadway and throughout the world.

175. As a result of Actors Equity’s conduct which it perpetuated including at a time when the Musical was otherwise being impacted by COVID, the Musical was forced to close on July 17, 2022.

Actors Equity Continues Its Defamation of Drabinsky

176. Within days of the Musical announcing its closing, on or about July 14, 2022, Actors Equity placed Drabinsky in first position as a producer on its “Do Not Work” blacklist “including any production where he is acting in *any* producing capacity”. **Exhibit 40.**

177. On its website, Actors Equity describes the “Do Not Work” blacklist as “an additional tool to alert members of Equity or our 4A’s sister unions [American Guild of Musical Artists, American Guild of Variety Artists, The Guild of Italian American Actors, and The

Screen Actors Guild-American Federation of Television and Radio Artists] to the non-union status of certain employers.”⁸ It goes on to state: “Unfortunately, there are times when good-faith negotiations between Actors’ Equity and employers do not result in an agreement acceptable for union members. Other producers may refuse to negotiate altogether or default on the terms of their agreement.”

178. Actors Equity’s blacklist was not only unjustified, it *could not* be applicable to Drabinsky. In connection with the Musical, he was never the employer of any member of Actors Equity nor a party to any contract with them. He was not a member of the Broadway League. Further, as set forth above, Drabinsky was never a principal of either the Broadway Partnership or PSPSI. In connection with the Musical, he never defaulted on any term of agreement with Actors Equity and has never refused to negotiate with Actors Equity. He was never in charge of the finances for the Musical. Rather, in his sole position as lead creative producer of the Musical, he was regularly consulted by the co-producers and investors.

179. Actors Equity’s inclusion of Drabinsky on the “Do Not Work” blacklist is not only unsupportable, but it is contrary to Actors Equity’s own terms not to maintain such a “blacklist” at all. Actors Equity’s agreement with the Broadway League states:

The League and Equity both pledge themselves to use their best efforts to prevent blacklisting in the theatre. The opposition to blacklisting is not a controversial issue between the League and Equity. The term "blacklisting" shall be deemed to mean the submission by a Producer to pressure groups and/or the use of private lists published or unpublished of persons not to be employed in theatrical productions. To that end, Equity and the League shall jointly investigate and deal with all complaints of blacklisting in the theatre and take any and all lawful means to correct, remedy and actively resist each and every instance of blacklisting as and when it arises. If a joint investigation is warranted, representatives of the respective parties will meet and adopt rules and regulations which will govern said investigation.

Exhibit 130, p. 16, ¶ 9.

⁸ <https://www.actorsequity.org/resources/DoNotWork/>.

Drabinsky Has Been Significantly Damaged by Actors Equity

FIRST CAUSE OF ACTION

(Defamation)

180. Drabinsky repeats and realleges each of the preceding paragraphs in the Complaint as if fully set forth herein.

181. The statements by Actors Equity alleged herein constitute defamation, *per se*, as each are false statements made to third parties, causing Drabinsky significant damages.

182. Actors Equity engaged in an intentional campaign of harassment and abuse, publishing numerous untruthful statements about Drabinsky that represented such major misrepresentations of Drabinsky's character, history, activities or beliefs that serious offense may reasonably be expected to be taken by reasonable persons in their position.

183. Further, Actors Equity had knowledge that its statements were false, or acted with reckless disregard as to the falsity of their statements and the false light in which Drabinsky would be placed.

184. These false publications have caused and continue to cause Drabinsky actual and substantial damages.

185. Actors Equity's malicious lies have not only caused Drabinsky economic damages and emotional distress, but have also severely harmed Drabinsky's reputation and image, causing substantial damages.

186. As a result of the foregoing, Drabinsky has been damaged in an amount that exceeds \$50,000,000 exclusive of statutory interest, costs, and legal fees.

187. Drabinsky further seeks, and is entitled to, punitive damages, attorneys fees, interest and costs, as a result of Actors Equity's misconduct.

SECOND CAUSE OF ACTION

(Intentional Tort)

188. Drabinsky repeats and realleges each of the preceding paragraphs in the Complaint as if fully set forth herein.

189. Actors Equity, by its outrageous, cruel and extreme conduct, intentionally engaged in a pattern to cause harm to Drabinsky.

190. The intentional misconduct consisted of an intentional campaign of harassment and abuse, publishing untruthful statements about Drabinsky and causing him to sustain serious damages.

191. As a result of the foregoing, Drabinsky has been damaged in an amount that exceeds \$50,000,000 exclusive of statutory interest, costs, and legal fees.

192. Drabinsky further seeks, and is entitled to, punitive damages, attorneys fees, interest and costs, as a result of Actors Equity's misconduct.

THIRD CAUSE OF ACTION

(Negligence)

193. Drabinsky repeats and realleges each of the preceding paragraphs in the Complaint as if fully set forth herein.

194. Actors Equity, by its reckless actions and statements, behaved below the level of care that an entity of ordinary prudence would have exercised under the same circumstances.

195. The misconduct consisted of a negligent campaign of harassment and abuse, publishing untruthful statements about Drabinsky and causing him to sustain serious damages.

196. As a result of the foregoing, Drabinsky has been damaged and continues to be damaged in an amount that exceeds \$50,000,000 exclusive of statutory interest, costs, and legal fees.

WHEREFORE, Drabinsky respectfully requests the relief sought herein, together with any other relief that the Court deems just and proper.

October 20, 2022

THE ROTH LAW FIRM, PLLC

A handwritten signature in black ink, appearing to be 'R. Roth', with a stylized, cursive flourish extending to the right.

By: _____

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